

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1403 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ORIENTAL INSURANCE CO.LTD.

Versus

RAJESH HARILAL SHAH

Appearance:

MR DARSHAN M PARIKH for Petitioners

MR NV ANJARIA for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 18/09/96

ORAL JUDGEMENT

Rule. Service of rule is waived by Mr N .V.Anjaria for the respondent.

By this revision under section 115 of the Code of Civil Procedure, 1908 (Code), the petitioners original defendants have questioned the judgment and order dated 17.6.96 recorded by the Extra Assistant Judge, Bhuj,

Kutch in Civil Miscellaneous Appeal No.62 of 1996 whereby the order passed below Ex.5 in Regular Civil Suit No.80/96 by the Civil Judge (J.D.), Bhuj, Kutch, came to be quashed.

The petitioner No.1 is an insurance company registered under the Companies Act, 1956 and is an acquiring company as defined under the General Insurance Business (Nationalisation) Act, 1972 and is covered and governed under the provisions of the said Act. Petitioner No.2 the Branch Manager of the petitioner No.1 Company at New Station Road, Bhuj, Kutch. The respondent herein is the original plaintiff who instituted the above suit for declaration and perpetual injunction against the petitioners. The respondent plaintiff contended that the petitioners are not entitled to close down the branch office in Bhuj and sought a declaration that the action of the petitioners in closing down the said Branch of the Insurance Company after issuing a policy is illegal and unjust and against the principles of natural justice and malafide. The respondent also sought perpetual injunction restraining the petitioners from closing down the Branch of the Insurance Company at Bhuj. The respondent original plaintiff by giving application Ex.5 applied for interlocutory injunction under Order 39 Rule 1 and 2 read with section 151 of the Code.

The petitioners appeared and resisted the suit and the application for interlocutory injunction by filing written statement. The petitioners, inter alia, contended that the branch of the Oriental Insurance Company at Bhuj was not doing business well and considering the cost ratio and the claim ratio, it was not a viable unit and therefore, it was very difficult to run the business in the said Branch. In other words, the contention of the petitioners has been that the said Branch is commercially not viable and continuing of such a branch was not in the interest of the Company. It was, therefore, decided by the petitioners to close down the said branch and the staff working in the said branch was to be accommodated either in the branch of New Indian Insurance Company at Bhuj or any other branch of the Company. In short, the decision was taken by the petitioner to close down the Bhuj Branch of the Oriental Insurance Company and it was decided to merge to the business or branch with the Gandhidham branch of the petitioner company.

After considering the facts and circumstances and hearing both the parties, the Trial Court rejected the application Ex.5 for interlocutory injunction by passing

an order on 12th April, 1996 wherein it was held that there is no prima facie case and that irreparable injury will not be caused to the plaintiff. It was also found by the Trial Court that balance of convenience is also in rejecting the application Ex.5.

The said judgment and order rejecting the application Ex.5 recorded by the Trial Court came to be reversed by the Extra Assistant Judge, Kutch-Bhuj on 17.6.96 in Civil Miscellaneous Appeal No.62/96 which was filed by the unsuccessful plaintiff who was paying premium of Rs.87/for having insured his Luna moped with the concerned branch which was sought to be closed. The Appellate Court has reversed the interim order below Ex.5 of the Trial Court holding that there is prima facie case which is challenged in this revision under section 15 of the Code. While allowing the appeal, the Appellate Court has directed the petitioners not to close the branch office at Bhuj till the disposal of Civil Suit No.80/96, by its judgment and order recorded on 17th June, 1996.

Section 64-VC of the Insurance Act, 1938 reads as under :

"64-VC. Restrictions on the opening of a new place of business -- (1) No insurer shall, after commencement of the insurance (Amendment) Act, 1968, open a new place of business in India or change otherwise than within the same city, town or village, the location of an existing place of business situated in India without obtaining the prior permission of the Controller.

(2) The Controller may grant permission under sub-section (1) subject to such conditions as he may think fit to impose either generally or with reference to any particular case.

(3) Where, in the opinion of Controller, an insurer has, at any time, failed to comply with any of the conditions imposed on him under this section, the Controller may, by order in writing and after affording reasonable opportunity to the insurer for showing cause against the action proposed to be taken against him revoke any permission granted under this section.

Explanation -- For the purposes of this section, "place of business" includes a branch, sub-branch, inspectorate, organisation office and any other office, by whatever name called."

It could very well be seen from the aforesaid provisions that the object of section 64-VC of the said Act is to prevent an insurer from opening a new place of business after 1.6.69 i.e. after the Insurance (Amendment) Act, 1988 came into force without the previous permission the Controller. The underlying purport and design of the said provision is to prevent unfair competition and rivalry among the insurers. There is no dispute about the fact that the petitioner Insurance Company is one of the four units of General Insurance Corporation. The Insurance Company after taking stock of the business of the said branch and considering other relevant aspects reached to the conclusion that the said branch is not commercially and economically viable. The Appellate Court committed serious illegality in reversing the order of the Trial Court which is based on correct appreciation of facts. It cannot be said that policy holder of the Company can prevent the decision of the insurer in closing down economically unviable unit while merging the business with the nearest branch of the company.

It is a settled proposition of law that following principles must be considered before examining and adjudicating any dispute with regard to interlocutory injunction:

- (1) Prima facie case;
- (2) Balance of convenience; and
- (3) Irreparable injury.

The view taken by the Trial Court that there was no prima facie case in favour of the plaintiff was justified. Even if it is assumed that there is prima facie case, that itself is not sufficient for grant of interlocutory injunction as the aforesaid three conditions must co-exist. The Appellate Court, with due respect, unfortunately, failed to appreciate the aforesaid three celebrated principles governing the grant or refusal of the interlocutory injunction and committed serious error in reversing the order passed below Ex.5 by the Trial Court.

Apart from that, the provisions of section 64-VC of the Act is not applicable in so far as the present case is concerned. The Central Government, Ministry of Finance (Department of Revenue and Insurance) in exercise of its power under section 35 of the General Insurance Business (Nationalisation) Act has issued a notification dated 29.12.72, inter alia, providing that section 64-VC of the Insurance Act will not be applicable to the General Insurance Corporation of India and any acquiring company.

Since section 64-VC of the Act are not applicable to the petitioner Company, it being an acquiring company under the General Insurance Business (Nationalisation) Act, the said provisions are not at all attracted. Therefore, on that count also, the impugned judgment and order recorded by the Appellate Court reversing the order of the Trial Court below application Ex.5 is required to be quashed and set aside while exercising powers under section 115 of the Code.

In the result, the impugned judgment and order dated 17.6.96 recorded by the Extra Assistant Judge, Bhuj-Kutchh in Civil Miscellaneous Appeal No.62/96 is quashed and set aside while allowing this revision. Accordingly, this revision stands allowed. Rule is made absolute to the aforesaid extent with costs.

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